

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PHILLIES,

Plaintiff,

v.

HARRISON/ERICKSON, INCORPORATED,
HARRISON ERICKSON, WAYDE
HARRISON and BONNIE ERICKSON,

Defendants.

CASE NO. 1:19-cv-07239-VM

**FIRST SET OF REQUESTS TO THE PHILLIES FOR THE
PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED
INFORMATION AND TANGIBLE THINGS**

PLEASE TAKE NOTICE that, pursuant to Federal Rules of Civil Procedure 26 and 34 and the Local Civil Rules of the Southern District of New York, Defendants Harrison/Erickson, Incorporated, Harrison Erickson, Wayde Harrison, and Bonnie Erickson (collectively and individually, “Defendants”) hereby request that Plaintiff The Phillies make available for inspection and copying the documents, electronically stored information, and things described below, within thirty (30) days after service hereof at the offices of Mitchell Silberberg & Knupp LLP, 437 Madison Avenue, 25th Floor, New York, NY 10022.

DEFINITIONS

1. The Phillies/You/Your/Yours. The terms “The Phillies,” “you,” “your,” and “yours” shall mean Plaintiff The Phillies, and all predecessors, successors, divisions, and affiliates thereof, and all representatives of the foregoing.

2. Defendants. The term “Defendants” shall mean, individually and collectively, Defendants Harrison/Erickson, Incorporated, Harrison Erickson, Wayde Harrison, and Bonnie Erickson, and all predecessors, successors, divisions, and affiliates thereof, and all representatives of the foregoing.

3. Complaint. The term “Complaint” shall mean the Complaint in the above-captioned action.

4. The Phanatic. The term “The Phanatic” shall mean the current mascot for your Major League Baseball Team, the Philadelphia Phillies, and embodies The Phanatic Artwork, as that term is defined herein.

5. The Phanatic Artwork. The term “The Phanatic Artwork” shall mean the work registered with the United States Copyright Office on May 4, 1979, Registration No. VA 0-023-748 and any identifiable features embodied thereto. For clarity, this includes but is not limited to those features alleged in paragraph 108 of the Complaint.

6. The Phanatic Marks. The term “The Phanatic Marks” shall mean The Phillies’ purported trademark rights in The Phanatic, as described and alleged *inter alia* in paragraph 74 of the Complaint, including but not limited to U.S. Trademark Registration Nos. 4,143,914; 4,143,913; 4,199,377; 4,035,158; 4,265,099; 4,246,618; 4,234,650; and 4,120,821.

7. 1984 Assignment. The term “1984 Assignment” shall mean the agreement executed between Harrison Erickson on the one hand, and The Phillies on the other hand, dated October 31, 1984, a copy of which is attached as Exhibit G to the Complaint.

8. March 1978 Agreement. The term “March 1978 Agreement” shall mean the agreement executed between Harrison Erickson on the one hand, and The Phillies on the other hand, dated July 15, 1978, a copy of which is attached as Exhibit B to the Complaint.

9. July 1978 Agreement. The term “July 1978 Agreement” shall mean the agreement executed between Harrison Erickson on the one hand, and The Phillies on the other hand, dated July 15, 1978, a copy of which is attached as Exhibit C to the Complaint.

10. 1979 Lawsuit. The term “1979 Lawsuit” shall mean the action filed in the Southern District of New York captioned, *Harrison, et al. v. The Philadelphia Nat’l League Club, Inc.*, 79 Civ. 2663 (HFW).

11. 1979 Settlement. The term “1979 Settlement” shall mean the agreement executed between Harrison Erickson on the one hand, and The Phillies on the other hand, dated November 26, 1979, a copy of which is attached as Exhibit F to the Complaint.

12. 2018 Termination Letter. The term “2018 Termination Letter” shall mean the letter sent by Defendants’ attorneys to David Montgomery, dated June 1, 2018, identified in paragraph 76 of the Complaint.

13. The terms “communication,” “document,” “identify,” “person,” “concerning,” “any,” “all,” “each,” “and,” and “or” shall have the meanings set forth in Local Civil Rule 26.3

14. “Including” means including without limitation.

INSTRUCTIONS

1. You are to search all documents within your possession, custody, or control, wherever located, including but not limited to documents placed in storage facilities and

REQUEST NO. 13:

All documents concerning each derivative work of The Phanatic that you claim you created during the term of the 1984 Assignment.

REQUEST NO. 14:

All documents concerning each derivative work of The Phanatic that you claim you can use after the effective termination date.

REQUEST NO. 15:

All documents concerning your ownership rights in each derivative work of The Phanatic that you claim you created during the term of the 1984 Assignment.

REQUEST NO. 16:

All documents concerning any copyright registration made or filed by you in connection with any derivative work of The Phanatic.

REQUEST NO. 17:

All documents submitted or sent (by anyone) to the United States Patent and Trademark Office (“USPTO”), or received (by anyone) from the USPTO, relating to The Phanatic Marks, including but not limited to documents relating to The Phillies’ applications for, or registrations of, The Phanatic Marks.

REQUEST NO. 18:

All documents concerning any efforts undertaken by you, Major League Baseball, or any of your or their agents or representatives to enforce any of your alleged rights in The Phanatic Marks against any person or entity, including but not limited to any “cease-and-desist” letters you or Major League Baseball sent or lawsuits you or Major League Baseball filed alleging infringement of any of your rights.